IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

R.S.A.No. 552 of 2006.

Date of decision: 1.6.2007.

Shri Surjan Singh and another …**Appellants.**

Versus

M/S Rai Sahib Puran Mal Trust & others …**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the appellants **Mr. R.K.Bawa, Sr. Advocate, with Mr. RPS Thakur, Advocate.**

For the Respondents: **Mr. Ashok Kumar Sood, Advocate.**

Dev Darshan Sud, J. (Oral).

This is defendants Second Appeal against the judgments and decrees of the two Courts below ordering the eviction of the plaintiff from the suit premises and directing payment for use and occupation charges. The plaintiff is a registered trust. A decree for use and occupation charges till possession and interest @ 18% per annum was claimed by the plaintiff. The plaintiff instituted suit on the allegations that it was a

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

registered trust and was exclusive owner of the four storeyed building bearing Municipal No. 91, situated in Gali No. 14, Lower Bazar, Shimla. It was pleaded that Smt. Jaspal Kaur, daughter of Achhraj Singh and Smt. Ram Kaur were the tenants after the death of Smt. Ram Kaur, of premises bearing Municipal No. 91/2 situated in the building as aforesaid on rent, @ Rs.237.60 per annum. The allegations in the plaint further are that Smt. Jaspal Kaur died on 24.5.1988 and was not survived by any legal heirs who could inherit the tenancy. The defendants without any authority or right are occupying the premises.

Written statement was filed by the defendants – appellants raising a number of objections and also alleging tenancy. The learned trial Court framed nine issues on the objections as alleged.

Primarily, the defence put up by the respondents was that the Court trying the suit did not have the pecuniary jurisdiction and when the suit was transferred to a different Court, proceedings should have started afresh; the suit was barred by limitation; the suit was not maintainable as all the trustees had not joined together as plaintiffs for filing the suit

and the subsequent permission granted to amend the cause title under Order 1 Rule 10 of the Code of Civil Procedure would constitute a bar under the Limitation Act for continuing the action. The learned trial Court found all the issues against the plaintiffs except the issue of possession and held that the suit was maintainable and it was within limitation. On the question of tenancy, relying upon the decisions in *Puran Singh Tailor Master v. Ram Murti, 1981 (2) RLR 448; Madan Gopal Kanodia v. Mamraj Maniram and others, AIR 1976 SC 461 and Smt. Manjushri Raha and others. V. B.L.Gupt and others, AIR 1977 SC 1158, it* was pleaded that the basic document creating tenancy by the defendants i.e. the municipal record could only be relevant for the purposes of possession. On the question of limitation also, the learned Courts below found in favour of the plaintiffs- respondents. The learned trial Court also held that when application under Order 1 Rule 10 was filed for impleading the other trustees as plaintiffs, no objection was filed by the defendants. Relying upon the decision in Jain Swetambara Murthi Pujaka Samastha and others v. Waman Dattatreya Pukale and others (AIR 1979 Karnataka 111) amongst others, it

was held that one of the trustees could sue a tres passer and the suit instituted could be treated as one having been filed within time.

I have heard learned counsel for the parties and gone through the record.

In this appeal the questions which have already been adjudicated by reference to facts as recorded by the learned Courts below have been reiterated. Learned counsel for the appellants submits that the suit was barred by time and that all the trustees had to join together to institute the suit, otherwise the suit would be bad in law and not maintainable. He submits that the date on which application under Order 1 Rule 10 CPC was allowed would constitute the date for the purposes of reckoning limitation. The submissions made on behalf of the learned counsel appearing for the defendants-appellants cannot be accepted. As already held by the learned Courts below by reference to decided law even one trustee can sue a trespasser in the suit premises of the trust and such suit would be deemed to have been filed on behalf of all the trustees. That apart, the defendants – appellant are rank trespassers as held,

with no title for legal occupation. They cannot be given the benefit of technicalities in order to defeat the legitimate claim of the plaintiffs. On the question of jurisdiction, the law is well settled that unless there is inherent lack of jurisdiction to entertain the suit, prejudice must be proved if it is urged that the trial or the appellate Court lacks territorial or pecuniary jurisdiction. These principles were considered in detail by the Hon'ble Supreme Court in Kiran Singh and others v. Chaman Paswan and others (AIR 1954 SC 340). It was held:

> **"(6)…….It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties……"(Page 342 para 6).**

However, the question of prejudice was also considered both under the context of Section 11 of the Suits Valuation Act, (1887) and Section 21 of the Code of Civil Procedure. Their Lordships while concluding the judgment held that unless prejudice is established, no relief can be given on this ground:

> **"…Even apart from this, we are satisfied that no prejudice was caused to the appellants by their appeal having been heard by the District Court. There was a fair and full hearing of the appeal by that Court; it gave its decision on the merits on a consideration of the entire evidence in the case, and no injustice is shown to have resulted in its disposal of the matter. The decision of the learned Judges that there were no grounds for interference under Section 11 of the Suits Valuation Act is correct."(Para 17 Page 345).**

In <u>Surendra Mahanti v. Ghasiram Mahanti and others</u> (AIR 1996 ORISSA 172), in defendant's second appeal the question regarding pecuniary jurisdiction was raised as one to annul the judgment and decree passed by the Courts below. Rejecting the arguments, the High Court of Orissa held:

> **"……But then, Mr. Sarangi has failed to satisfy this Court that even though objection to the pecuniary jurisdiction was taken before both the Courts below at the earliest opportunity, there was consequent failure of justice. It is held by the Apex Court in the case reported in AIR 1981 SC 1683, Koopilan Uneen's daughter Pathumma v. Koopilan Uneen's son Kuntalan Kutty, that even if the objection was taken in the Court of first instance and also such objection was taken at the earlier possible opportunity, yet the other third and important condition as prescribed under Section 21 of the C.P.C. is that there has been a consequent failure of justice…."**

To similar effect are the judgments of Allahabad High Court in Sushil Sharma v. 13th Additional District Judge, Gaziabad and others (AIR 2000 Allahabad 249) and On the death of Mazid Ali (the plaintiff) his legal heirs Mustt. Maimuna Begum & others, v. Sri Lakshman Rabidas and others (AIR 1992 Gauhati 91), holding that failure of justice must be established.

I see no reason to differ from these judgments. Even otherwise, in Kiran Singh and others v.

Chaman Paswan and others (supra), the Hon'ble Supreme Court has held that failure of justice must be established. In the present case, the record does not show any such prejudice to the defendant and the objection has been raised solely to defeat the legitimate claims of the respondents. No such defect in the trial has been shown to me from the record, nor it has been demonstrated as to how the trial of the suit by a Court lacking pecuniary jurisdiction has prejudiced the appellants. I do not find any substantial question of law which requires adjudication in the present appeal.

Learned counsel for the appellants has submitted that under Section 100 of the Code of Civil Procedure, jurisdiction cannot be extended to correct even gross errors of fact. He has placed reliance on the decision of the Supreme Court in Gurdev Kaur and others v. Kaki and others (AIR 2006 SC 1975). He has urged that the concurrent findings of fact by learned Courts below cannot be disturbed by the High Court taking a generous approach to the entire matter. He places reliance on a judgment of the Supreme Court in Veerayee Ammal v. Seeni Ammal (2002) 1 SCC 134 and

Pakeerappa Rai v. Seethamma Hengsu Dead by LRs. (2001) 9 SCC 521). There can be no dispute with this proposition of law.

The learned Courts below as a fact having found the defendants to be rank trespassers, no interference is called for in this appeal. The technical defect, if any in the institution of the suit, stood removed by filing application under Order 1 Rule 10 of the Code of Civil Procedure. Even otherwise, a trespasser cannot resist the suit of the trust on the ground of non joinder of all the trustees. Both the learned Courts below have considered the facts and law on the points urged. In the facts and circumstances of the case, no substantial question of law arises for determination. The points raised have already been dealt with by the learned Courts below. The concurrent findings of fact cannot be interfered with. The appeal is accordingly dismissed. All pending applications shall stand disposed of. There shall be no order as to costs.

June 1, 2007 (PC). (Dev Darshan Sud), J.